No. 15-674

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA, *et al.*,
Petitioners,

v.

STATE OF TEXAS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF EDUCATORS AND CHILDREN'S ADVOCATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

MATTHEW E. PRICE
Counsel of Record
MATTHEW S. HELLMAN
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
mprice@jenner.com

MICHAEL W. ROSS
ANDREW J. LICHTMAN
JASON P. HIPP
BREANNE K. LONG
JENNER & BLOCK LLP
919 Third Avenue
New York, NY 10022

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 5

ARGUMENT 7

I. Humanitarian Concerns Are An Important Consideration Under The Immigration Laws 7

II. The Courts Did Not Consider The Harms To U.S. Citizen And LPR Children Before Enjoining DAPA 8

A. The DAPA Eligible Population Faces A Substantial Risk Of Deportation 10

B. The Deportation Of DAPA-Eligible Parents Leaves Families With A Horrible Dilemma For Their Children: Parental Abandonment Or Leaving Their Home Country 12

C. The Threat Of Removal Facing Parents Causes U.S. Citizen And LPR Children To Endure Emotional, Psychological, And Educational Harm 17

D. DAPA Would Have Alleviated These Harms 22

III. The Courts Failed To Weigh The Public Interest In Enhancing Educational Opportunities Before Enjoining Expanded DACA 26

CONCLUSION 33

APPENDIX: LIST OF *AMICI CURIAE* 1a

TABLE OF AUTHORITIES

CASES

Arizona v. United States, 132 S. Ct. 2492 (2012) 8

Certain Named & Unnamed Non-Citizen Children & Their Parents v. Texas, 448 U.S. 1327 (1980) 26

INS v. Errico, 385 U.S. 214 (1966) 7

Plyler v. Doe, 457 U.S. 202 (1982) 22

Reno v. America Arab Anti-Discrimination Committee, 525 U.S. 471 (1999) 8

Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982) 9

Winter v. Natural Resource Defense Council, Inc., 555 U.S. 7 (2008) 9

STATUTES

8 U.S.C. § 1151(b)(2)(A)(i) 8

8 U.S.C. § 1229b(b)(1) 8

OTHER AUTHORITIES

Lawrence Aber et al., Society for Research in Child Development, *Children, Families, and Poverty: Definitions, Trends, Emerging Science and Implications for Policy* (2012), http://www.nasbo.org/sites/default/files/SPR_26%233_FINAL%20%281%29.pdf 21

Advisory Committee on Student Financial Assistance: Report to Congress and the Secretary of Education, *The Rising Price of Inequality: How Inadequate Grant Aid Limits College Access and Persistence* (June 2010), http://chronicle.com/items/ biz/pdf/acsfa_rpi.pdf 29

American Academy of Pediatrics, *Early Childhood Adversity, Toxic Stress, and the Role of the Pediatrician: Translating Developmental Science into Lifelong Health*, 129 Pediatrics e224 (2012), http:// pediatrics.aappublications.org/content/pediatrics/129/1/e224.full.pdf 18

American Psychological Ass'n, *Crossroads: The Psychology of Immigration in the New Century*, Report of the APA Presidential Task Force on Immigration (2012), http://www.apa.org/topics/immigration/immigration-report.pdf 22

Frank D. Bean et al., *Mexican Immigrant Political and Economic Incorporation*, 4 Persp. on Pol. 309 (2006), http://www.ime.gob.mx/investigaciones/2006/estudios/APSA-Identidad-migrantes_mexicanos.pdf 23-

Annette Bernhardt et al., *All Work and No Pay: Violations of Employment and Labor Laws in Chicago, Los Angeles, and New York City*, 91 Soc. Forces 725 (2013) 22

Kalina M. Brabeck et al., *The Influence of Immigrant Parent Legal Status on U.S.-Born Children's Academic Abilities*, Applied Developmental Sci. (Dec. 21, 2015) 20

Kalina Brabeck et al., *The Psychosocial Impact of Detention and Deportation on U.S. Migrant Children and Families: A Report for the Inter-American Human Rights Court* (Aug. 2013), https://www.bc.edu/content/dam/files/centers/humanrights/doc/IACHR%20Report%20on%20Pyschosocial%20Impact%20of%20Detention%20%20Deportation-FINAL%208-16-13.pdf 19

Randy Capps et al., Migration Policy Institute, *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children* (Feb. 2016), http://www.migrationpolicy.org/sites/default/files/publications/DAPA-Profile-FINALWEB.pdf 9, 15, 20

Ajay Chaudry et al., The Urban Institute, *Facing Our Future: Children in the Aftermath of Immigration Enforcement* (Feb. 2, 2010), http://www.urban.org/publications/412020.html 13, 15

Gordon Dahl & Lance Lochner, *The Impact of Family Income on Child Achievement: Evidence from the Earned Income Tax Credit*, (National Bureau of Economic Research, Working Paper 14599, Dec. 2008), http://www.nber.org/papers/w14599 25

Jennifer C. Day & Eric C. Newburger, U.S. Census Bureau, *The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings* (July 2002), https://www.census.gov/prod/2002pubs/p23-210.pdf 28

Department of Homeland Security Memorandum (Nov. 20, 2014), Dkt. No. 38, Ex. 7 (Dec. 24, 2014) 5

Thomas P. DiNapoli & Kenneth B. Bleiwas, New York State Comptroller, *The New York State DREAM Act*, Report 1-2014 (May 2013), https://www.osc.state.ny.us/osdc/rpt1-2014.pdf 32

Marilyn J. Essex et al., *Epigenetic Vestiges of Early Developmental Adversity: Childhood Stress Exposure and DNA Methylation in Adolescence*, 84 Child Dev. 58 (2013), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3235257/pdf/nihms313621.pdf 14

Roberto G. Gonzales et al., American Immigration Council, *DACA at Year Three: Challenges and Opportunities in Accessing Higher Education and Employment* (Feb. 2016), http://www.immigrationpolicy.org/sites/default/files/docs/daca_at_year_three.pdf 30, 31

Roberto G. Gonzales et al., *Becoming DACAmented: Assessing the Short-Term Benefits of Deferred Action for Childhood Arrivals*, 58 Am. Behav. Scientist 1852 (2014), http://abs.sagepub.com/content/ early/2014/10/01/0002764214550288.abstract 28-29

Raul Hinojosa-Ojeda, North American Integration & Development Center, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform* (Nov. 21, 2014), Dkt. No. 38, Ex. 21 (Dec. 24, 2014) 28, 30

Victoria Kline, Instituto para las Mujeres en la Migracion, A.C. (IMUMI), *Where Do We Go From Here? Challenges Facing Transnational Migrant Families Between the US and Mexico* (Oct. 2013), http://uf.imumi.org/recursos/where_challenges.pdf 17

Heather Koball et al., Urban Institute & Migration Policy Institute, *Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents* (Sept. 2015), http://www.migrationpolicy.org/research/health-and-social-service-needs-us-citizen-children-detained-or-deported-immigrant-parents 13, 14, 15, 16

Katherine Kortenkamp & Jennifer Ehrle, The Urban Institute, *The Well-Being of Children Involved with the Child Welfare System: A National Overview* (Jan. 2002), http://www.urban.org/research/publication/well-being-children-involved-child-welfare-system/view/full_report 15

Lomi Kriel, *Qualified Immigrants Still Face Threat of Deportation*, Houston Chronicle (Mar. 10, 2015), http://houstonchronical.com/news/houston-texas/houston/article/Qualified-immigrants-still-face-threat-of=6122712.php 12

Nancy S. Landale et al., *Behavioral Functioning Among Mexican-origin Children: Does Parental Legal Status Matter?*, 56 J. Health & Soc. Behav. 2 (2015), http://www.asanet.org/journals/ JHSB/Mar15HSPFeature.pdf 19

Mark A. Leach et al., US2010 Project, *Unauthorized Immigrant Parents: Do Their Migration Histories Limit Their Children's Education* (Oct. 2011), http://www.s4.brown.edu/us2010/Data/Report/report101811.pdf 19

Brianna Lee, *Immigration Reform: Authorities No Longer Shielding DAPA-Eligible Immigrants from Deportation Cases*, Int'l Bus. Times (Feb. 27, 2015), http://ibtimes.com/immigration-reform-authorities-no-longer-shielding-dapa-eligible-immigrants-1831310 12

Tess Lefmann & Terri Combs-Orme, *Prenatal Stress, Poverty, and Child Outcomes*, 31 Child & Adolescent Soc. Work J. 577 (2014) 14

Laurel Lucia et al., UC Berkeley Center for Labor Research and Education and UCLA Center for Health Policy Research, *Health Insurance and Demographics of California Immigrants Eligible for Deferred Action* (Mar. 2015), http://healthpolicy.ucla.edu/publications/Documents/PDF/2015/immigrants-policy-brief-mar2015.pdf 25

Susan E. Mayer, *Revisiting an Old Question: How Much Does Parental Income Affect Child Outcomes?*, 27 Focus 21 (2010), http://irp.wisc.edu/publications/focus/pdfs/foc272e.pdf 24

Memorandum Opinion for the Secretary of Homeland Security and the Counsel to the President (Nov. 19, 2014), Dkt. No. 38, Ex. 2 (Dec. 24, 2014) 17

Gilberto Mendoza, National Conference of State Legislatures, *Tuition Benefits for Immigrants* (July 15, 2015), http://www.ncsl.org/research/immigration/tuition-benefits-for-immigrants.aspx 32

National Center for Education Statistics, *The Condition of Education 2009* (June 2009), http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2009081 28

National Center for Education Statistics, *Percentage of Recent High School Completers Enrolled in 2-Year and 4-Year Colleges, by Income Level: 1975 through 2013*, http://nces.ed.gov/programs/digest/d14/tables/dt14_302.30.asp 25

National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (Oct. 29, 2015), http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx 27

National Research Council & Institute of Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development* (Jack P. Shonkoff and Deborah A. Phillips, eds., 2000), http://www.nap.edu/read/9824/chapter/13 ..... 18, 19

National Scientific Council on the Developing Child, ***Maternal Depression Can Undermine the Development of Young Children*** (Center on the Developing Child at Harvard University, Working Paper No. 8, Dec. 2009), http://developingchild.harvard.edu/wp-content/uploads/2009/05/Maternal-Depression-Can-Undermine-Development.pdf 14

News Release, Massachusetts Taxpayers Foundation, ***Massachusetts Public Colleges Would Gain Millions of Dollars from Undocumented Immigrants*** (Jan. 5, 2006), http://www.masstaxpayers.org/sites/masstaxpayers.org/files/MTF%20Undocumented%20Immigrant%20Education%20News%20Release.pdf 32

Manuel Pastor & Enrico A. Marcelli, Center for Study of Immigrant Integration, University of Southern California, ***What's at Stake for the State: Undocumented Californians, Immigration Reform, and Our Future Together*** (2013), http://dornsife.usc.edu/assets/sites/731/docs/whats_at_stake_for_the_state.pdf 24

Caitlin Patler & Jorge A. Cabrera, Institute of Research on Labor and Employment, *From Undocumented to DACAmented* (June 2015), http://www.irle.ucla.edu/publications/documents/Patler_DACA_Report_061515.pdf 29

Erica Pearson, *Millions of Undocumented Immigrants in Limbo During Court Battle over Deferred Action for Parental Accountability*, N.Y. Daily News (Mar. 20, 2015), http://www.nydailynews.com/new-york/ruling-blocking-deferred-actiion-program-hurts-immigrants-article-1.2152878 23

Maria Perez, *My Husband was Deported*, The Hill (Mar. 24, 2014), http://thehill.com/blogs/congress-blog/foreign-policy/201388-my-husband-was-deported 13, 15

Roque Planas, *DAPA-Eligible Immigrants Face Threat of Deportation, Advocates Say*, Huffington Post (Feb. 27, 2015), http://huffingtonpost.com/2015/02/27/dapa-deportation-immigrants_n_6764890.html 12

Policies for the Apprehension, Detention and Removal of Undocumented Immigrants (Nov. 20, 2014), Dkt. No. 38, Ex. 5 (Dec. 24, 2014) 11

Stephanie Potochnick, *How States Can Reduce the Dropout Rate for Undocumented Immigrant Youth: The Effects of In-State Resident Tuition Policies*, paper presented at the Population Association of America Conference (Apr. 2011), http://paa2011.princeton.edu/papers/110491 27-28

Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations, in Whither Opportunity? Rising Inequality, Schools, and Children's Life Chances* (Greg J. Duncan & Richard J. Murnane eds., 2011) 24

Report of the Executive Office of the President of the United States, *The Economic Effects of Administrative Action on Immigration* (Nov. 2014) Dkt. No. 38, Ex. 20 (Dec. 24, 2014) 20, 24, 30

Joydeep Roy, Economic Policy Institute, *Low Income Hinders College Attendance for Even the Highest Achieving Students* (Oct. 12, 2005), http://www.epi.org/publication/webfeatures_snapshots_20051012/ 25

Jack P. Shonkoff et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 Pediatrics 232 (2012), http://pediatrics.aapublications.org/content/pediatrics/early/2011/12/21/peds.2011-2663.full.pdf 18

Texas House Research Organization, Bill Analysis of HB 1403 (Apr. 18, 2001), http://www.hro.house.state.tx.us/pdf/ba77r/hb1403.pdf 32

Perla Trevizo, *Fewer Parents of US-Citizen Kids Being Deported*, Arizona Daily Star (Jan. 2, 2016), http://tucson.com/news/fewer-parents-of-u-s--citizen-kids-being-deported/articlee45be3ba-b66e-5017-ab9c-9e0905b35c87.html 11

United We Dream, *Tuition Equity for Undocumented Students and DACA Grantees: Access by State* (Feb. 2014), http://www.unitedwedream.org/wp-content/uploads/2014/05/deep_education_map.pdf 27

United States Department of Homeland Security, ICE, *Deportation of Aliens Claiming U.S.-Born Children: First Semi-Annual, Calendar Year 2013* (Apr. 28, 2014), http://big.assets.huffingtonpost.com/2013report1.pdf 10-11

United States Department of Homeland Security, ICE, *Deportation of Aliens Claiming U.S.-Born Children: Second Half, Calendar Year 2013 Report to Congress* (Apr. 28, 2014), http://big.assets.huffingtonpost.com /2013report2.pdf 11

Hansi Lo Wang, *Immigrants Worry They'll Face Deportation After Deferred Action Delay*, NPR (Mar. 4, 2015), http://www.npr.org/2015/03/04/390475592/immigrants-worry-they-ll-face-deportation-after-deferred-action-delay 23

Seth Freed Wessler, *Primary Data: Deportations of Parents of U.S. Citizen Kids*, Colorlines (Dec. 17, 2012), http://colorlines.com/archives/2012/12/deportations_of_parents_of_us-born_citizens_122012.html 10

Seth Freed Wessler, Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* (Nov. 2011), https://www.raceforward.org/research/reports/shattered-families Applied_Research_Center—Shattered_Families.pdf 15

Hirokazu Yoshikawa, *Immigrants Raising Citizen: Undocumented Parents and Their Young Children* (2012) 20

Elly Yu, *As Courts Fight Over Immigration, Georgia Family Faces Father's Deportation*, WABE, Atlanta's NPR Station (Mar. 18, 2015), http://wabe.org/post/courts-fight-over-immigration-georgia-family-faces-fathers-deportation 16

STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici are the American Academy of Pediatrics, the American Federation of Teachers, the Center for Law and Social Policy, First Focus, the National Association of Social Workers, the National Education Association, and 70 other organizations committed to ensuring the psychological, social, emotional, and physical well-being of children in the United States, particularly by ensuring that these children have meaningful educational opportunities and stable family environments in which to learn.

Amicus curiae the American Academy of Pediatrics (AAP) is a non-profit professional organization of 64,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists whose mission is to attain optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. Immigrant children represent a considerable part of the economic and social future of the nation. The future prosperity and well-being of the United States depends on the health and vitality of all of its children, without exception. Whenever possible, the separation of a child from his or her family and home environment should be

---

[1] No person or entity other than *Amici* and their counsel authored this brief or made a monetary contribution to the preparation or submission of this brief. Counsel of record for the parties have consented to the filing of this brief, and letters of consent are being filed with the Clerk of the Court pursuant to Supreme Court Rule 37.

prevented, and family reunions should be expedited. Children whose parents are taken into custody and/or deported have been shown to experience mental and emotional health problems, and the resultant loss of family income has been shown to result in family housing and food instability that can negatively affect a child's safety, health, and development. Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) have the potential to improve the health and well-being of children and, by helping to keep millions of immigrant families together, they can improve the future prosperity of the United States.

Amicus curiae the American Federation of Teachers (AFT), an affiliate of the AFL-CIO, was founded in 1916 and today represents 1.6 million members in more than 3,400 local affiliates nationwide. Since its founding, the AFT has been a major force for America's democracy and for preserving and strengthening America's commitment to public education and to educational opportunity for all. Approximately one million AFT members (early childhood educators, K-12 teachers, paraprofessionals and school-related personnel, school nurses, college professors and adjuncts instructors) work in traditional public schools and college campuses. Every day, AFT members interact with students, parents, and others, many of whom fear disclosing their immigration status when they seek public services. The AFT understands the beneficial impact of the DACA program. The AFT serves thousands of students who have been granted

DACA, and AFT membership now includes hundreds of formerly undocumented students who, solely because of DACA, were able to earn a college degree and work as teachers or paraprofessionals in public schools. AFT is uniquely situated to comment on the potential benefits of the DAPA program and DACA expansion.

Amicus curiae the Center for Law and Social Policy (CLASP) is a national, nonpartisan, anti-poverty organization advocating for public policies and programs at the federal, state, and local levels that reduce poverty, help low-income people become economically self-sufficient, and create ladders to opportunity for all. CLASP has expertise in early care and education and early childhood development. In accordance with research, CLASP believes that promoting stability and minimizing stress on children and parents that results from fear of separation, detention, or deportation is critically important for children's development, learning, and future success. DACA expansion and DAPA have the potential to improve educational, health, and economic outcomes for children of immigrants, whose success is vitally important to the future of the United States.

Amicus curiae First Focus is a bipartisan advocacy organization dedicated to making children and families the priority in federal policy and budget decisions. One of First Focus's priority issues is to ensure that federal policies, including immigration policies, promote the health, safety, and well-being of children in immigrant families. First Focus and its partner organization, the First Focus Campaign for

Children, have been advocating for both legislative and administrative solutions to keep families together and minimize the harm of immigration enforcement policies on children. First Focus believes that implementation of deferred action programs like DACA and DAPA can help promote the healthy development of the over five million children living in mixed-status families in the United States.

Amicus curiae the National Association of Social Workers (NASW) is the largest association of professional social workers in the United States, with over 130,000 members in 55 chapters. The Texas Chapter of NASW has 5,700 members. NASW develops policy statements on issues of importance to the social work profession. Consistent with those statements, NASW supports efforts to ensure that children from immigrant families, regardless of citizenship status, are provided with the same societal protections as children from non-immigrant families. As social work practitioners and proponents of human rights, NASW also supports the U.S. government in providing homeland security and combating terrorism in a manner consistent with human rights, values, and ethics. The struggle to protect human rights remains a vital priority for the social work profession in the twenty-first century.

Amicus curiae the National Education Association (NEA) is a nationwide employee organization with nearly three million members, the vast majority of whom serve as educators and education support professionals in our nation's public

schools, colleges, and universities. NEA has a strong and longstanding commitment to ensuring that every child has the opportunity to obtain a high-quality public education, as well as to promoting students' well-being more broadly. Additionally, NEA supports access to higher education, including financial aid and in-state tuition, regardless of immigration status. NEA members teach millions of students who stand to benefit educationally and psychosocially from DAPA and expanded DACA, and NEA is therefore well-positioned to comment on the public benefit of these programs.

SUMMARY OF ARGUMENT

The Court of Appeals upheld a nationwide preliminary injunction preventing implementation of the DAPA[2] and expanded DACA[3] programs. These programs would have provided security from removal

---

[2] A person is eligible under the DAPA program if he/she (1) had a U.S. citizen or lawful permanent resident son or daughter as of November 20, 2014; (2) had resided continuously in the United States since before 2010; (3) was physically present in the United States on November 20, 2014 (and when making the DAPA request); (4) had no lawful immigration status on November 20, 2014; and (5) does not fall within an enforcement priority or otherwise present a factor making DAPA inappropriate. *See* Dep't of Homeland Sec. Memorandum at 4 (Nov. 20, 2014), Dkt. No. 38, Ex. 7 (Dec. 24, 2014).

[3] The expanded DACA program lifted certain age and date restrictions from the government's existing program of making deferred action available to young people who were brought to the United States as children. *See id.*

for millions of parents of U.S. citizen and lawful permanent resident (LPR) children (under the DAPA program), as well as individuals who came to the United States as children (under the expanded DACA program). In enjoining these programs, the courts below failed to assess the harm to the public interest that these programs were designed to mitigate – and that the injunction therefore perpetuates.

Most importantly, the courts failed to consider the harms to U.S. citizen and LPR children that would result from the injunction of the DAPA program. When implemented, DAPA would have removed the threat of deportation for parents of millions of U.S. citizen and LPR children. Due to the nationwide injunction, these parents will continue to face the threat of removal, and their children will face the prospect of being separated from their parents, entering the child welfare system, or being forced to leave their U.S. homeland for a country that is not their own.

As detailed below, children whose parents face removal from the United States are more likely to suffer a host of harms, particularly to their development, educational opportunities, economic stability, and psychosocial well-being. The DAPA program directly addresses these serious harms to U.S. citizen and LPR children by alleviating the risk of removal temporarily. The lower courts failed to consider that the government's decision to adopt these programs was in the best interests of these U.S. citizen and LPR children. The courts also failed to adequately

account for the benefits of work authorization for the eligible population and the enhanced educational opportunities that expanded DACA would facilitate.

In short, lifting the injunction would benefit millions of U.S. citizen and LPR children by providing them with the family stability and security that is essential in supporting their healthy development, educational attainment, emotional well-being, and economic stability. It would also advance important educational opportunities for the DACA-eligible population.

ARGUMENT

I. Humanitarian Concerns Are An Important Consideration Under The Immigration Laws

The Immigration and Nationality Act (INA) requires that special attention be paid to the interests of children, and to the promotion of family stability among U.S. citizens and their undocumented family members. As this Court has explained, "[t]he legislative history of the [INA] clearly indicates that the Congress intended to provide for a liberal treatment of children and was concerned with the problem of keeping families of United States citizens and immigrants united." *INS v. Errico*, 385 U.S. 214, 220 n.9 (1966) (quoting H.R. Rep. No. 85-1199, at 7 (1957)). Reflecting this legislative purpose, the INA gives discretion to the Attorney General to, for example, cancel removal for certain nonpermanent resident aliens who show that their removal would pose

significant difficulty for their U.S. citizen or LPR children, *see* 8 U.S.C. § 1229b(b)(1); it also places no limits on the number of immigrant visas available for parents of U.S. citizens at least 21 years old, *see id.* § 1151(b)(2)(A)(i).

Indeed, this Court has long recognized that the government may consider these humanitarian concerns when exercising its discretion concerning how to enforce the nation's immigration laws. *See, e.g., Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012) ("Discretion in the enforcement of immigration law embraces immediate human concerns."); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999) (describing government's "regular practice" of granting "deferred action" for "humanitarian reasons"). Here, the deferred action programs announced by the government would serve the INA-recognized goals of ensuring the unity and stability of families that include U.S. citizens and LPRs. The importance of these programs is all the more pronounced because U.S. citizen and LPR children will be key beneficiaries of the relief provided by them.

II. The Courts Did Not Consider The Harms To U.S. Citizen And LPR Children Before Enjoining DAPA

An estimated four million children under 18 years old reside in households with potentially DAPA-

eligible parents.[4] The injunction leaves this DAPA-eligible population at material risk of removal, and that risk of removal causes substantial and irreversible harm not only to the potential beneficiaries of DAPA, but particularly to their U.S. citizen and LPR children. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citation omitted) (explaining that a preliminary injunction should be denied where it "adversely affect[s] a public interest for whose impairment, even temporarily, an injunction bond cannot compensate"). This harm to U.S. citizen and LPR children is an important factor supporting the government's exercise of its discretion to target the parents of these children with its exercise of prosecutorial discretion. Permitting that harm to continue is manifestly contrary to the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23-26 (2008) (explaining that reversal of a preliminary injunction may be warranted on "[the public interest] factors alone" when the court below "significantly understat[s] the burden" on the public interest).

The courts below failed to consider the impact of the injunction on the individuals affected by it, and particularly the benefits to U.S. citizen and LPR children that would result from the DAPA program. In

---

[4] More than 80% of these children are U.S. citizens. *See* Randy Capps et al., Migration Policy Institute, *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children* (Feb. 2016), http://www.migrationpolicy.org/sites/default/files/publications/DAPA-Profile-FINALWEB.pdf.

dismissing such considerations, the District Court concluded there was "no reason to believe" DAPA-eligible parents would be removed if the injunction were granted, and that, in fact, the affected individuals would be better off if an injunction were granted, because the programs might later be reversed. *Texas v. United States*, 86 F. Supp. 3d 591, 676 (S.D. Tex. 2015). For its part, the Court of Appeals did not mention the potential harm to children in its public interest analysis. Respectfully, these decisions should now be reversed.

A. The DAPA Eligible Population Faces A Substantial Risk Of Deportation

Parents of U.S. citizen and LPR children face a significant risk of removal. In an approximately two-year period between 2010 and 2012, the United States Immigration and Customs Enforcement (ICE) removed 204,810 immigrants who said they had one or more U.S.-born children.[5] In 2013 and 2014, ICE removed 111,710 immigrants who had one or more U.S.-born children.[6] Further, the record before the District Court

---

[5] Seth Freed Wessler, *Primary Data: Deportations of Parents of U.S. Citizen Kids*, Colorlines (Dec. 17, 2012) (ICE statistics obtained through Freedom of Information Act request), http://colorlines.com/archives/2012/12/deportations_of_parents_of_us-born_citizens_122012.html.

[6] *See* U.S. Dep't of Homeland Sec., ICE, *Deportation of Aliens Claiming U.S.-Born Children: First Semi-Annual, Calendar Year 2013*, at 4 (Apr. 28, 2014), http://big.assets.huffingtonpost.com/2013report1.pdf (reporting 39,410 removals of parents of U.S. citizens

reflected that, without DAPA, the federal government could not assure that the eligible population would be safe from removal.[7]

More recently, news reports suggest that,

---

in first half of 2013); U.S. Dep't of Homeland Sec., ICE, *Deportation of Aliens Claiming U.S.-Born Children: Second Half, Calendar Year 2013 Report to Congress*, at 4 (Apr. 28, 2014), http://big.assets.huffingtonpost.com/2013report2.pdf (reporting 33,000 removals of parents of U.S. citizens in second half of 2013); Perla Trevizo, *Fewer Parents of US-Citizen Kids Being Deported*, Arizona Daily Star (Jan. 2, 2016), http://tucson.com/news/fewer-parents-of-u-s--citizen-kids-being-deported/article_e45be3ba-b66e-5017-ab9c-9e0905b35c87.html (reporting 39,300 removals in 2014). While these statistics do not correlate precisely with the continuing removal of DAPA-eligible parents (which encompasses parents of both U.S. citizen and LPR children, disqualifies certain parents on other grounds, and depends upon the federal government's discretion), they support the conclusion that U.S. citizen and LPR children remain at material risk of harm from the deportation of their parents.

[7] *See* Policies for the Apprehension, Detention and Removal of Undocumented Immigrants at 5 (Nov. 20, 2014), Dkt. No. 38, Ex. 5 (Dec. 24, 2014) (expressly *permitting* the removal of non-priority immigrants, such as DAPA-eligible parents, and noting that memorandum is not intended "to prohibit or discourage the apprehension, detention, or removal of aliens unlawfully in the United States who are not identified as priorities herein"); Transcript of Oral Argument at Preliminary Injunction Hearing at 42, Dkt. No. 106 (Jan. 20, 2015) (noting that new deferred action programs intended to preserve resources that would otherwise be expended in pursuing removal); *accord* Decl. of Karl Eschbach, Ph.D ¶ 17 (Jan. 6, 2015), Dkt. No. 64, Ex. 14 (Jan. 7, 2015) (declaration of Plaintiff's expert affirming that, without DAPA, parents "would otherwise have been identified by [DHS] and subject to deportation").

following the District Court's injunction, DAPA-eligible parents continue to be deported or otherwise subject to actions that increase their likelihood of deportation.[8] In sum, parents of U.S. citizen and LPR children remain at risk of deportation.

B. The Deportation Of DAPA-Eligible Parents Leaves Families With A Horrible Dilemma For Their Children: Parental Abandonment Or Leaving Their Home Country

When parents are deported, entire families are affected. Families face the harsh dilemma of either keeping children behind without parental support or

---

[8] Lomi Kriel, *Qualified Immigrants Still Face Threat of Deportation*, Houston Chronicle (Mar. 10, 2015), http://houstonchronical.com/news/houston-texas/houston/article/Qualified-immigrants-still-face-threat-of-6122712.php (reporting on ICE's deportation, after the injunction, of father of three U.S. citizen children, who had previously been told he could be eligible for DAPA and would be released); Brianna Lee, *Immigration Reform: Authorities No Longer Shielding DAPA-Eligible Immigrants from Deportation Cases*, Int'l Bus. Times (Feb. 27, 2015), http://ibtimes.com/immigration-reform-authorities-no-longer-shielding-dapa-eligible-immigrants-1831310 (reporting on threatened deportation of father of four U.S. citizen children); Roque Planas, *DAPA-Eligible Immigrants Face Threat of Deportation, Advocates Say*, Huffington Post (Feb. 27, 2015), http://huffingtonpost.com/2015/02/27/dapa-deportation-immigrants_n_6764890.html (reporting that ICE required undocumented mother of two U.S. citizen children, who would apparently be eligible for DAPA, to install an ankle monitor, a signal of potential removal).

having children leave with their parents to a foreign and unknown country. Either option visits harm on U.S. citizen and LPR children.

The first option results in substantial and well-recognized psychosocial harms that accompany forced parental abandonment. Research shows that children who have not seen a parent for one month after the parent's arrest experience more frequent changes in sleeping habits, anger, and withdrawing from family compared to children who have seen their parents within a month after arrest.[9] Children who have had a parent detained or deported also experience increased occurrences of post-traumatic stress disorder, depression, and anxiety.[10]

---

[9] Ajay Chaudry et al., The Urban Institute, *Facing Our Future: Children in the Aftermath of Immigration Enforcement*, at 43 (Feb. 2, 2010), http://www.urban.org/publications/412020.html.

[10] In one reported example, a mother described the effects on her three U.S. citizen children after the deportation of their father: "Our four year-old son misses his dad and is going through a depression. Our thirteen year-old daughter's grades are going down, and I'm going to have to close our business. When you deport one person . . . you leave behind three broken hearts." Maria Perez, *My Husband Was Deported*, The Hill (Mar. 24, 2014), http://thehill.com/blogs/congress-blog/foreign-policy/201388-my-husband-was-deported; *see also* Heather Koball et al., Urban Institute & Migration Policy Institute, *Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents*, at 5 (Sept. 2015), http://www.migrationpolicy.org/research/health-and-social-service-needs-us-citizen-children-detained-or-deported-immigrant-parents; Chaudry et al., *supra* note 9.

Deportation and detention procedures can also cause the remaining parent to suffer from depression, social isolation, and economic instability, all of which can exacerbate the negative effects experienced by children.[11] High levels of stress in mothers, both prenatally and during the child's earliest years of life, interrupt a child's healthy development.[12] The impact of untreated maternal depression is widely documented as interrupting young children's healthy cognitive, social-emotional, and behavioral development, the effects of which can last throughout a child's life, impacting brain architecture and causing persistent disruptions of stress response systems.[13]

Parental detention or deportation also has a significant financial impact on families, many of whom already live below the federal poverty level. The sudden loss of parental income results in housing and

---

[11] Koball et al., *supra* note 10, at 5-6.

[12] *See* Marilyn J. Essex et al., *Epigenetic Vestiges of Early Developmental Adversity: Childhood Stress Exposure and DNA Methylation in Adolescence*, 84 Child Dev. 58 (2014), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3235257/pdf/nihms313621.pdf; Tess Lefmann & Terri Combs-Orme, *Prenatal Stress, Poverty, and Child Outcomes*, 31 Child & Adolescent Soc. Work J. 577 (2014).

[13] National Scientific Council on the Developing Child, *Maternal Depression Can Undermine the Development of Young Children* (Center on the Developing Child at Harvard University, Working Paper No. 8, Dec. 2009), http://developingchild.harvard.edu/wp-content/uploads/2009/05/Maternal-Depression-Can-Undermine-Development.pdf.

food insecurity and increased risk of entering the child welfare system, all of which are predictors of poor social and educational outcomes for children later in life.[14] When a child of a detained or deported parent becomes involved with the child welfare system, the child faces significant barriers to reunifying with his or her parents, resulting in longer stays in foster care and sometimes permanent separation.[15] In addition, mothers often report having difficulty taking care of their children and finding paid work to make up for the father's lost income.[16] The loss of a father's earnings on average results in a decrease of $24,000 or 73 percent of a family's income.[17] These financial stresses often are

---

[14] Perez, *supra* note 10; Koball et al., *supra* note 10, at 5; Chaudry et al., *supra* note 9; Katherine Kortenkamp & Jennifer Ehrle, The Urban Institute, *The Well-Being of Children Involved with the Child Welfare System: A National Overview* (Jan. 2002), http://www.urban.org/research/publication/well-being-children-involved-child-welfare-system/view/full_report.

[15] Koball et al., *supra* note 10, at 8; Seth Freed Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare* (Nov. 2011), https://www.raceforward.org/research/reports/shattered-families Applied_Research_Center---Shattered_Families.pdf.

[16] For example, one mother in South Florida who was working when her spouse was deported said she had to choose between working double shifts and caring for her children at night – if she chose to stay home, then she could not afford necessities such as shoes or soap. *See* Koball et al., *supra* note 10, at 8.

[17] Capps et al., *supra* note 4, at 2.

compounded by the costs associated with deportation proceedings, including hiring lawyers.[18]

The removal of parents can also interrupt or curtail children's educations. For example, following the District Court's injunction, two teenage brothers in Georgia, Alex and Jonathan, witnessed the deportation of their father. Their father had no criminal convictions and should have been eligible for DAPA prior to the injunction, as Jonathan is a U.S. citizen. Because their father is diabetic, their mother will return to Mexico to care for him. The brothers will remain in the United States without their parents so they can continue to attend high school. Jonathan had planned to attend college next year, but without parental support, he now plans to look for work instead.[19] As this example illustrates, the loss of support and stability visited upon U.S. citizen and LPR children when their parents are deported is a critical harm that the DAPA program alleviates.

The second option effectively visits the penalty of removal on U.S. citizen and LPR children. When their parents are forcibly removed from the United States, U.S. citizen and LPR children can leave the United States with their parents, rather than face

---

[18] *See* Koball et al., *supra* note 10, at 8.

[19] *See* Elly Yu, *As Courts Fight Over Immigration, Georgia Family Faces Father's Deportation*, WABE, Atlanta's NPR Station (Mar. 18, 2015), http://wabe.org/post/courts-fight-over-immigration-georgia-family-faces-fathers-deportation.

abandonment by remaining in the United States. Apart from being forced to leave their home country – the United States – U.S. citizen and LPR children who accompany their deported parents often have difficulty integrating to a new one, and face limited access to education and health care, as well as difficulties integrating due to language and cultural barriers.[20]

As a result of the injunction, an estimated four million U.S. citizen and LPR children – whose parents would have been eligible for deferral from removal under DAPA – remain at risk of harm from this horrible dilemma.[21]

C. The Threat Of Removal Facing Parents Causes U.S. Citizen And LPR Children To Endure Emotional, Psychological, And Educational Harm

Beyond the harm inflicted by removal itself, children whose parents face threatened removal also suffer significant harms. Children whose parents are at risk of deportation are more likely to suffer emotional and psychological harm linked to the fear of losing a

---

[20] Victoria Kline, Instituto para las Mujeres en la Migracion, A.C. (IMUMI), *Where Do We Go From Here? Challenges Facing Transnational Migrant Families Between the US and Mexico*, at 55 (Oct. 2013), http://uf.imumi.org/recursos/where_challenges.pdf.

[21] Mem. Op. for the Secretary of Homeland Sec. and the Counsel to the President at 30 (Nov. 19, 2014), Dkt. No. 38, Ex. 2 (Dec. 24, 2014) (estimating that approximately four million parents would be eligible for DAPA).

loved one, and these negative effects are particularly striking for young children. The interactions between children and their parents during the infant and toddler years, particularly through consistent relationships and adequate social supports, are essential inputs for future learning, behavior, and health.[22] Disruption of that relationship can be highly stressful for and damaging to children. Indeed, it is well-established that "toxic stress" experienced by young children causes a physiological response that leads to negative long-term consequences.[23] For example, Mexican-origin children with undocumented mothers are more likely to exhibit a variety of social and behavioral issues, including anxiety, depression, and low self-esteem, when

---

[22] National Research Council & Institute of Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development*, at 225-26 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000), http://www.nap.edu/read/9824/chapter/13.

[23] Toxic stress in early childhood, defined as "the excessive or prolonged activation of the physiologic stress response systems in the absence of the buffering protection afforded by stable, responsive relationships," has been found to influence brain patterns with devastating consequences later in life, including substance abuse, school failures, financial hardship, poor health, and inadequate coping mechanisms. *See* American Academy of Pediatrics, *Early Childhood Adversity, Toxic Stress, and the Role of the Pediatrician: Translating Developmental Science into Lifelong Health*, 129 Pediatrics e224-25 (2012), http://pediatrics.aappublications.org/content/pediatrics/129/1/e224.full.pdf; Jack P. Shonkoff et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 Pediatrics 232 (2012), http://pediatrics.aappublications.org/content/pediatrics/early/2011/12/21/peds.2011-2663.full.pdf.

compared to Mexican-origin children whose parents have legal status.[24] These traits correlate with worse educational and social outcomes for children later in life, including poor school performance and greater risk of substance abuse.[25] Negative effects of parental undocumented status can occur even in very young children with consequential effects. Experiences during a child's earliest years profoundly affect brain development – impacting a child's cognitive, linguistic, social, and emotional abilities – and build a healthy foundation for life.[26] As a result, the negative effects of parental undocumented status may be observed at a very young age: as early as age two, children of

---

[24] Nancy S. Landale et al., *Behavioral Functioning Among Mexican-origin Children: Does Parental Legal Status Matter?*, 56 J. Health & Soc. Behav. 2-18 (2015), http://www.asanet.org/journals/JHSB/Mar15JHSBFeature.pdf.

[25] Mark A. Leach et al., US2010 Project, *Unauthorized Immigrant Parents: Do Their Migration Histories Limit Their Children's Education?*, at 13 (Oct. 2011), http://www.s4.brown.edu/us2010/Data/Report/report101811.pdf (finding that the undocumented status of a child's mother typically reduces that child's schooling by one and a quarter years); Kalina Brabeck et al., *The Psychosocial Impact of Detention and Deportation on U.S. Migrant Children and Families: A Report for the Inter-American Human Rights Court*, at 5-6 (Aug. 2013), https://www.bc.edu/content/dam/files/centers/humanrights/doc/IACHR%20Report%20on%20Pyschosocial%20Impact%20of%20Detention%20%20Deportation-FINAL%208-16-13.pdf (finding that parental legal vulnerability to deportation is linked to their children's emotional well-being and academic performance).

[26] *See From Neurons to Neighborhoods*, *supra* note 22.

undocumented parents are more likely to have lower cognitive skills than comparable children in families with immigration status.[27] These effects continue throughout childhood. For example, U.S. citizen children between the ages of seven and ten with undocumented parents systematically perform lower in math, reading, and spelling compared to children whose immigrant parents had legal status.[28] These harms directly follow from the uncertainty experienced by children living with the constant threat of their parent's deportation.

In addition, children living with undocumented parents are more likely to grow up in poverty, without health care, and with limited English proficiency.[29] Poverty is a strong predictor of children's success in

---

[27] Hirokazu Yoshikawa, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children* (2012).

[28] Kalina M. Brabeck et al., *The Influence of Immigrant Parent Legal Status on U.S.-Born Children's Academic Abilities*, Applied Developmental Sci. (Dec. 21, 2015).

[29] *Id.* at 2. The average annual income for undocumented workers is $22,029, placing a family of four relying on an undocumented worker's wage under the poverty level. *See* Report of the Executive Office of the President of the United States, *The Economic Effects of Administrative Action on Immigration*, at 14 (Nov. 2014) Dkt. No. 38, Ex. 20 (Dec. 24, 2014). One study estimated that 36% of families with DAPA-eligible parents live in poverty. Capps et al., *supra* note 4, at 10.

school and their health outcomes.[30] Children growing up in poverty experience poorer health, higher incidence of developmental delays and learning disabilities, and more hunger compared to their peers.[31]

Although there are many causes of the heavy burden placed on the children of undocumented parents, several are critical here. Undocumented parents are more likely to hold jobs with poor working conditions and high risk environments, including longer hours, lower wages, and less access to employer benefits, leading to less time and resources available for their children. Further, undocumented parents may be cautious about social interactions or allowing their children to participate in extracurricular or recreational programs for fear of exposing their status, resulting in more limited social connections that could otherwise help child-rearing and development. Finally, undocumented parents are often afraid to interact with the government, so their U.S. citizen children may not benefit from public programs for which they are

---

[30] Lawrence Aber et al., Society for Research in Child Development, *Children, Families and Poverty: Definitions, Trends, Emerging Science and Implications for Policy*, at 4 (2012), http://www.nasbo.org/sites/default/files/SPR_26%233_FINAL%20%281%29.pdf.

[31] *Id.* at 4, 20, 23.

eligible, such as early childhood enrichment, health care, and nutrition programs.[32]

Together, the consequences visited on U.S. citizen and LPR children of undocumented parents at risk of deportation lead to an unmistakable result: these children risk becoming something less than full members of society. These harms threaten children's attainment of a basic education and undermine their long-term prospects for self-actualization and educational and economic success.[33] In sum, denying a secure place in our society for U.S. citizen and LPR children of undocumented parents imposes a "lifetime hardship on a discrete class of children not accountable for their disabling status." *Plyler v. Doe*, 457 U.S. 202, 223 (1982).

D. DAPA Would Have Alleviated These Harms

In addition to evidence that children of undocumented parents suffer a multitude of harms, there is also evidence of the positive effect of the now-enjoined programs. Within the first month after the issuance of the Johnson Memorandum in November

---

[32] Annette Bernhardt et al., *All Work and No Pay: Violations of Employment and Labor Laws in Chicago, Los Angeles, and New York City*, 91 Soc. Forces 725 (2013).

[33] Am. Psychol. Ass'n, *Crossroads: The Psychology of Immigration in the New Century*, Report of the APA Presidential Task Force on Immigration (2012), http://www.apa.org/topics/immigration/immigration-report.pdf).

2014, family members released from detention were reunited with their children.[34] Testimonials suggest that feelings of anxiety were ameliorated in the expectation that parents could soon come out of the shadows – only to have the anxiety not only return, but intensify, after the injunction was issued.[35]

More generally, studies have consistently concluded that providing legal recognition to parents significantly mitigates children's harms and improves their overall well-being, including educational outcomes.[36] In addition, work authorization can be

---

[34] Erica Pearson, *Millions of Undocumented Immigrants in Limbo During Court Battle over Deferred Action for Parental Accountability*, N.Y. Daily News (Mar. 20, 2015), http://www.nydailynews.com/new-york/ruling-blocking-deferred-actiion-program-hurts-immigrants-article-1.2152878 (describing release and reunification of DAPA-eligible father with five-year-old son after issuance of Johnson Memorandum, following ten months in ICE custody).

[35] Hansi Lo Wang, *Immigrants Worry They'll Face Deportation After Deferred Action Delay*, NPR (Mar. 4, 2015), http://www.npr.org/2015/03/04/390475592/immigrants-worry-they-ll-face-deportation-after-deferred-action-delay (reporting that parent of five-year-old U.S. citizen son who had lived in U.S. for ten years was detained by ICE in 2014 but released after DHS issued the Johnson Memorandum; he "cried tears of joy to be with [his] son again, to be able to hug him and kiss him and play with him").

[36] Frank D. Bean et al., *Mexican Immigrant Political and Economic Incorporation*, 4 Persp. on Pol. 309, 311 (2006), http://www.ime.gob.mx/investigaciones/2006/estudios/APSA-Identidad-migrantes_mexicanos.pdf (reporting that 52% of survey respondents whose father became a U.S. citizen and 43% of

expected to increase parents' wages by 6% to 10%,[37] resulting in higher incomes that directly correlate to improved educational success for U.S. citizen and LPR children.[38] Indeed, children raised in higher-income families are far more likely to finish high school,[39] attend and graduate from college,[40] and achieve success

---

respondents whose father became a LPR received a college degree or some college education compared to 14% of children of undocumented fathers).

[37] *See The Economic Effects of Administrative Action on Immigration*, *supra* note 29, at 20; *see also* Manuel Pastor & Enrico A. Marcelli, Center for Study of Immigrant Integration, University of Southern California, *What's at Stake for the State: Undocumented Californians, Immigration Reform, and Our Future Together*, at 13 (May 2013), http://dornsife.usc.edu/assets/sites/731/docs/whats_at_stake_for_the_state.pdf (reporting that percentage of non-citizen immigrants with income above 150% of the poverty level jumps from 47% to 68% when an undocumented immigrant becomes documented); Capps et al., *supra* note 4.

[38] Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations, in Whither Opportunity? Rising Inequality, Schools, and Children's Life Chances* 91 (Greg J. Duncan & Richard J. Murnane eds., 2011) (reporting that the "socioeconomic status of a child's parents has always been one of the strongest predictors of the child's academic achievement and educational attainment").

[39] Susan E. Mayer, *Revisiting an Old Question: How Much Does Parental Income Affect Child Outcomes?*, 27 Focus 21 (2010), http://irp.wisc.edu/publications/focus/pdfs/foc272e.pdf (reporting that low-income children are more likely to drop out of high school than more well-off children).

[40] In 2013, only 45.5% of low-income students who completed high school in the previous year were enrolled in college, as compared

while doing so.[41] Children whose parents are eligible for work also benefit from non-monetary benefits afforded by their parents, including greater access to their parents' employer-sponsored health coverage.[42]

By reinstituting the threat of deportation and

---

to 63.8% of middle-income students and 78.5% of high-income students. National Center for Education Statistics, *Percentage of Recent High School Completers Enrolled in 2-Year and 4-Year Colleges, by Income Level: 1975 through 2013*, http://nces.ed.gov/programs/digest/d14/tables/dt14_302.30.asp. Even when controlling for academic performance, a family's low socioeconomic status impacts children's subsequent educational outcomes. Joydeep Roy, Economic Policy Institute, *Low Income Hinders College Attendance for Even the Highest Achieving Students* (Oct. 12, 2005), http://www.epi.org/publication/webfeatures_snapshots_20051012/ (showing that only 29% of low-income, high-performing eighth grade students went on to earn a bachelor's degree, as compared to 74% of high-income, high-performing eighth graders).

[41] Gordon Dahl & Lance Lochner, *The Impact of Family Income on Child Achievement: Evidence from the Earned Income Tax Credit* at 2 (National Bureau of Economic Research, Working Paper 14599 Dec. 2008), http://www.nber.org/papers/w14599 (reporting that $1,000 increase in parental income raised children's math and reading scores by 6% of a standard deviation).

[42] Laurel Lucia et al., UC Berkeley Center for Labor Research and Education and UCLA Center for Health Policy Research, *Health Insurance and Demographics of California Immigrants Eligible for Deferred Action*, at 3 (Mar. 2015), http://healthpolicy.ucla.edu/publications/Documents/PDF/2015/immigrants-policy-brief-mar2015.pdf (reporting that DAPA will increase access to private health insurance based on 21% increase in health coverage for DACA grantees).

keeping working parents in the shadows, the injunction renewed and exacerbated a state of psychological stress and economic deprivation that restricts educational outcomes for more than four million U.S. citizen and LPR children of DAPA-eligible parents. Because mere months are critical to children's development, particularly during their earliest years, withholding the advantages of the program works significant harm on U.S. citizen and LPR children nationwide. Under these conditions, the "balance of [irreparable] harm weighs heavily on the side of the children." *Certain Named & Unnamed Non-Citizen Children & Their Parents v. Texas*, 448 U.S. 1327, 1333-34 (1980) (placing significant weight on harms to children flowing from denial of an education, including "emotional and behavioral problems").

III. The Courts Failed To Weigh The Public Interest In Enhancing Educational Opportunities Before Enjoining Expanded DACA

In issuing and upholding the injunction, the courts below also did not consider the substantial benefits of the enhanced educational opportunities for long-time U.S. residents under expanded DACA.

The preliminary injunction prevents an estimated 290,000 people who arrived in this country as children from applying for DACA. This delay works a substantial harm on this population because it deprives them of immediate access to educational opportunities, internships, and career and vocational training

programs available to DACA recipients. The public interest favors access to educational opportunities for young people who have been educated in U.S. elementary and secondary schools and "know only this country as a home."[43]

In some states, DACA recipients qualify for higher education benefits for which other undocumented students do not. For example, in two states, DACA recipients may enroll in public colleges and universities, but other undocumented students may not.[44] At least six states have determined that students granted DACA can establish state residency for tuition purposes under their existing rules,[45] significantly increasing the chances those students will complete high school and attend college.[46] The long-term

---

[43] Complaint, Dkt. No. 1, Ex. C at 1 (Dec. 3, 2014).

[44] United We Dream, *Tuition Equity for Undocumented Students and DACA Grantees: Access by State* (Feb. 2014), http://www.unitedwedream.org/wp-content/uploads/2014/05/deep_education_map.pdf.

[45] States as diverse as Alabama, Maryland, Massachusetts, Ohio, New Hampshire, and Virginia have determined that students granted DACA can establish state residency for tuition purposes under their existing rules. *See id.* And at least 18 states, including Texas, have elected to provide in-state tuition rates to all students who meet certain criteria, regardless of their status. *See* National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (Oct. 29, 2015), http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx.

[46] *See, e.g.*, Stephanie Potochnick, *How States Can Reduce the Dropout Rate for Undocumented Immigrant Youth: The Effects of*

economic benefits to recipients of a college education are substantial.[47]

In addition, DACA recipients are eligible for federal work authorization documents, which significantly improves their chances of obtaining new jobs and increasing their earnings.[48] Increased wages

---

In-State Resident Tuition Policies, at 25, paper presented at the Population Association of America Conference (Apr. 2011), http://paa2011.princeton.edu/papers/110491 (finding that adoption of in-state tuition rates reduces overall dropout rate by 7% and by 16% among Mexican, foreign-born non-citizens).

[47] Jennifer C. Day & Eric C. Newburger, U.S. Census Bureau, *The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings*, at 4 (July 2002), https://www.census.gov/prod/2002pubs/p23-210.pdf (reporting that, over a 40-year full-time work life, individuals with a bachelor's degree earn on average a cumulative total of $2.1 million, more than double what a high school dropout earns); National Center for Education Statistics, *The Condition of Education 2009* at 40 (June 2009), http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2009081 (reporting median earnings of $45,000 for people between ages 25 and 34 with a bachelor's degree but only $29,000 for those with a high school diploma or equivalent).

[48] DACA has increased recipients' wages by more than 240% on average. Raul Hinojosa-Ojeda, North American Integration & Development Center, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform* at 2 (Nov. 20, 2014), Dkt. No. 38, Ex. 21 (Dec. 24, 2014); *see also* Roberto G. Gonzales et al., *Becoming DACAmented: Assessing the Short-Term Benefits of Deferred Action for Childhood Arrivals*, 58 Am. Behav. Scientist 1852 (2014), http://abs.sagepub.com/content/early/2014/10/01/0002764214550288.abstract (reporting

significantly expand the opportunity to pursue an education for any population – but especially so for a population that continues to lack access to federal financial aid and in-state tuition in many states.[49]

The injunction of expanded DACA delays implementation of a policy that has proven to result in further educational attainment. DACA is unique among immigration policies because it makes educational attainment a condition for eligibility. Eligible applicants must have a high school diploma or its equivalent or be enrolled in school, including K-12 education, adult education, literacy, or career-training programs. Thus, in the most straightforward sense, DACA's expansion encourages more individuals to remain in or return to school in order to qualify for the program, improving rates of educational attainment

---

that 59% of recent DACA recipients obtained a new job and 45% increased their earnings); Caitlin Patler & Jorge A. Cabrera, Institute for Research on Labor and Employment, *From Undocumented to DACAmented* at 5 (June 2015), http://www.irle.ucla.edu/publications/documents/Patler_DACA_Report_061515.pdf (finding that 65% of surveyed DACA recipients in California reported that their household's overall economic situation had improved after receiving DACA).

[49] The Advisory Committee on Student Financial Assistance: Report to Congress and the Secretary of Education, *The Rising Price of Inequality: How Inadequate Grant Aid Limits College Access and Persistence* at 23 (June 2010), http://chronicle.com/items/biz/pdf/acsfa_rpi.pdf (finding that only 58% of students who were "very concerned" about finances enrolled in a four-year college compared to 84% of students who were not concerned about finances).

among the eligible population.[50] For example, Tonya, an Arizona teenager, had dropped out of high school prior to DACA, after her parents' unsteady immigration experience and eventual return to Mexico left her feeling discouraged. The announcement of DACA gave Tonya an incentive to successfully complete her GED, which, in turn, has enabled her to enroll in a medical assistance training program.[51] Tonya's story illustrates another benefit of DACA, namely, DACA recipients are more likely to invest in additional education or vocational training because of the increased certainty in their ability to remain in the United States.[52]

DACA not only encourages enrollment in educational institutions, but also enhances the opportunities available to students once enrolled. For example, after receiving DACA, Jessica, a student at a private university in South Carolina, finally had the

---

[50] Approximately 426,000 individuals met all requirements for the initial DACA program except for the educational requirement, and countless more would have been similarly encouraged to pursue educational attainment for deferred action if not for the injunction. Hinojosa-Ojeda, *supra* note 48, at 3.

[51] Roberto G. Gonzales et al., American Immigration Council, *DACA at Year Three: Challenges and Opportunities in Accessing Higher Education and Employment* at 10 (Feb. 2016), http://immigrationpolicy.org/sites/default/files/docs/daca_at_year_three.pdf.

[52] *The Economic Effects of Administrative Action on Immigration*, *supra* note 29, at 6.

identification required to volunteer at a hospital, apply for an internship at a medical school, and take the MCAT, putting her on the path to fulfill her dream of becoming a doctor in an underserved community.[53]

Because enhanced educational attainment confers substantial economic benefits on both expanded DACA recipients and states and communities as a whole, the harm from the injunction of expanded DACA should have been considered by the courts below.[54] For example, the State of Texas has itself recognized the benefits of providing expanded access to education to the eligible population. In enacting legislation providing in-state tuition to all Texas residents, the State recognized that "every dollar invested in our state's higher education system pumps more than five dollars into our Texas economy" and "higher levels of education correlate to higher median earnings, lower unemployment, and lower poverty

---

[53] Gonzales et al., *supra* note 51, at 12-13.

[54] Because DACA and DAPA recipients receive only a temporary reprieve from deportation, have no path to citizenship, and remain ineligible for federal student financial aid and in-state college tuition in the majority of states, *Amici* contend that deferred action, while overwhelmingly in the public interest, does not adequately address the needs of undocumented youth and school-age children whose parents are undocumented. *Amici* continue to advocate for legislative action on immigration to holistically address the needs of students and children.

rates."[55] Other respondent states have at least implicitly recognized the benefits of expending state resources to provide higher education to undocumented students.[56] Of the respondent states, Texas has the most to gain from expanded deferred action, with nearly 500,000 eligible residents.[57] Other states similarly stand to gain substantial economic benefits from undocumented students' enhanced access to education.[58] These benefits were not adequately considered by the courts below.

---

[55] Texas House Research Organization, Bill Analysis of HB 1403 at 4 (Apr. 18, 2001), http://www.hro.house.state.tx.us/pdf/ba77r/hb1403.pdf.

[56] For example, the state legislatures of Florida, Kansas, Nebraska, and Utah have each enacted laws providing for in-state tuition for certain undocumented students. *See* Gilberto Mendoza, *Tuition Benefits for Immigrants*, National Conference of State Legislatures (July 15, 2015), http://www.ncsl.org/research/immigration/tuition-benefits-for-immigrants.aspx.

[57] Decl. of Joe Peters, ¶ 6, Dkt. No. 64, Ex. 24 (Jan. 7, 2015).

[58] *See, e.g.*, Thomas P. DiNapoli & Kenneth B. Bleiwas, New York State Comptroller, *The New York State DREAM Act* at 4, Report 1-2014 (May 2013), https://www.osc.state.ny.us/osdc/rpt1-2014.pdf (reporting that increased college attendance of undocumented students would be mitigated by economic benefits, including $60,000 in additional state tax revenue for each new person earning a bachelor's degree); News Release, Massachusetts Taxpayers Foundation, *Massachusetts Public Colleges Would Gain Millions of Dollars from Undocumented Immigrants* (Jan. 5, 2006), http://www.masstaxpayers.org/sites/masstaxpayers.org/files/MTF%20Undocumented%20Immigrant%20Education%20News%20Release.pdf.

CONCLUSION

For the reasons stated above, *Amici* urge this Court to reverse the judgment below.

Respectfully submitted,

MATTHEW E. PRICE
Counsel of Record
MATTHEW S. HELLMAN
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
mprice@jenner.com

MICHAEL W. ROSS
ANDREW J. LICHTMAN
JASON P. HIPP
BREANNE K. LONG
JENNER & BLOCK LLP
919 Third Avenue
New York, NY 10022

Counsel for Amici Curiae

APPENDIX

APPENDIX: LIST OF *AMICI CURIAE*

Advocates for Children and Youth
American Academy of Pediatrics
American Association of Community Colleges
American Federation of Teachers
Association of Latino Administrators and Superintendents
BUILD Initiative
California Latino School Boards Association
California Pan-Ethnic Health Network
Center for Law and Social Policy
The Child Care Law Center
Child Welfare League of America
Children Now
Children's Defense Fund
Children's HealthWatch
The Children's Partnership
Coalition on Human Needs
Columbia Law School Immigrants' Rights Clinic
Council of the Great City Schools
Dartmouth College
DePaul University
Desis Rising Up & Moving (DRUM)
East Bay College Fund
Educators for Fair Consideration
First Focus
Franklin & Marshall College
Freedom University
GLSEN
Greater Rochester Coalition for Immigration Justice
Haverford College

Hispanic Association of Colleges and Universities
Kids for College, Greater Rochester Coalition for Immigration Justice
Long Beach City College
Los Angeles Unified School District
MANA, A National Latina Organization
Mason DREAMers
MEChA of University of Portland
Mt. San Antonio College
National Alliance of Black School Educators
National Association for Bilingual Education
National Association for Chicana and Chicano Studies
National Association for the Education of Young Children
National Association of Social Workers
National Education Association
National Health Law Program
National Hispanic Medical Association
National Migrant and Seasonal Head Start Association
National Organization for Women
National Women's Law Center
Oakton Community College
Padres & Jóvenes Unidos
Pomona College
The Renew Group
Rutgers University - Newark
San Diego Dream Team
Sargent Shriver National Center on Poverty Law
The Scholarship Foundation of St. Louis
ScholarshipsA-Z
St. Joseph's College
Stand for Children - Nashville
Student Advocacy Center of Michigan

Student U
TeachDream NYC
TESOL International Association
TheDREAM.US
Trinity Washington University
True Colors Fund
U-Lead Athens
United States Hispanic Leadership Institute
United States Student Association
University of San Francisco
Village Leadership Academy
Voices for Children in Nebraska
Voices for Utah Children
Washington Dream Coalition
Williamette University Child & Family Advocacy Clinic
Young Center for Immigrant Children's Rights at the University of Chicago